

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

KERRY WHIPKEY and §
ROBYN WHIPKEY, §
§
Plaintiffs §
V. § CA NO. 2:09-CV-225-J
§
RUNNING D CONSTRUCTION, LLC. §
And JUSTIN SHEA DAVIS, §
§
Defendants.

**UNDERWOOD, WILSON, BERRY, STEIN & JOHNSON, P.C.'S
MOTION TO WITHDRAW AS COUNSEL**

The law firm of Underwood, Wilson, Berry, Stein & Johnson, P.C. (“**Underwood Firm**”), hereby respectfully submits its Motion to Withdraw as Counsel for Defendants, Running D Construction, LLC and Justin Shea Davis, in this matter. The basis for this Motion is that counsel has been wholly unable to contact either Defendant, despite numerous attempts to do so, both by phone and by letter.

The Underwood Firm received information regarding this suit from Defendants via facsimile on December 17, 2009. After two phone conversations with Defendants, Matt Sherwood and Kelly Utsinger of the Underwood Firm met in person with Defendants on December 22, 2009 to discuss this case. During that meeting, Defendants confirmed their correct mailing address and telephone numbers. This is the last time that any person from the Underwood Firm has ever spoken with Justin Shea Davis or any person with authority to act on behalf of Running D Construction, LLC.

Attorneys with the Underwood Firm attempted to contact Defendants by phone on

January 4, 11, 20, and 26. On each date, the attorney called both Running D's office and a personal cell phone number. Each time the attorney either left a voicemail or a message with Running D's secretary for Defendants to return the phone call. Defendants never contacted the Underwood Firm. On January 26, Matt Sherwood mailed a letter to Defendants, requesting that Defendants contact the Underwood Firm immediately.

On February 9, 2010, Matt Sherwood mailed a second letter to Defendants informing them that unless they contacted the Underwood Firm by Friday, February 19, 2010, the Underwood Firm would have to withdraw as their counsel of record with the Court. Attorneys with the Underwood Firm attempted to contact Defendants by phone between February 9 and 19, never able to contact Defendants. It has now been over two months since the Underwood Firm has been able to contact Defendants.

Good cause has been shown for the Court to grant this Motion to Withdraw as Counsel, namely that counsel has been completely unable to reach the Defendants. This case is still in its early stages, so the Motion to Withdraw should not disrupt the suit.

Because counsel has been unable to contact Defendants, Defendants have not consented to this Motion and counsel has no knowledge whether Defendants have a successor attorney. Defendants' address is: Running D Construction, LLC, 14314 Burrell St., Amarillo, TX 79119. Defendants' phone numbers are: (806) 622-0430 and (806) 681-1517.

WHEREFORE PREMISES CONSIDERED, Underwood, Wilson, Berry, Stein & Johnson, P.C. respectfully requests that the Court grant its Motion to Withdraw as Counsel in this matter.

RESPECTFULLY SUBMITTED this 23rd day of February, 2010.

Respectfully submitted,

Underwood, Wilson, Berry, Stein
& Johnson, P.C.

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By: /s// Matt Sherwood
Matt W. Sherwood

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February 2010, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the Court's electronic filing system. The electronic case filing system will send the "Notice of Electronic Filing" to the following have consented in writing to accept this Notice as service of this document by electronic means:

Charles L. Scalise
Ross Law P.C.
1104 San Antonio Street
Austin, Texas 78701

/s// Matt Sherwood
Matt W. Sherwood

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with Charles L. Scalise, attorney for Plaintiffs, on February 22, 2010 regarding the above motion and he indicated that he does not oppose this motion.

/s// Matt Sherwood
Matt W. Sherwood